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TITLE 56

RAILROADS

- Chapter 1. General Provisions, 56-1-1 to 56-1-24.
 2. Movement of Defective Rolling Stock, 56-2-1 to 56-2-12.

CHAPTER 1

GENERAL PROVISIONS

- Section 56-1-1. Railroad corporations—Powers and duties—Those existing, and hereafter organized.
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 56-1-15. Fire caused by sparks emitted.
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 56-1-18. When riding outside regular cars.
 56-1-19. Right to eject.
 56-1-20. Operating employees to wear insignia.
 56-1-21. Checking baggage.
 56-1-22. Railroads under public utilities commission.
 56-1-23. Conditional sales of equipment.
 56-1-24. Recording contract.

56-1-1. Railroad corporations—Powers and duties—Those existing, and hereafter organized.—Railroad corporations heretofore organized and now existing or hereafter organized under the laws of this state shall be subject to all the duties imposed and shall have and possess all the powers and privileges conferred by this title, as well as the powers and privileges conferred by the laws under which said corporations were organized or which are contained in their articles of incorporation and are not inconsistent with the laws and Constitution of this state.

History: L. 1907, ch. 93, § 5; C. L. 1907, § 434x; C. L. 1917, § 1229; R. S. 1933 & C. 1943, 77-0-1.

Cross-Reference.

Corporate organization generally, 16-1-1 et seq.

Collateral References.

Railroads ⇨ 4.
 74 C.J.S. Railroads § 3.
 Corporate existence, organization, duties, powers, and transactions, 44 Am. Jur. 223, Railroads § 12 et seq.

Power of court to authorize discontinuance of public service corporation

upon foreclosing a mortgage on its plant, 8 A. L. R. 238.

Right of railroad company to use or grant use of land in right-of-way for other than railroad purpose, 149 A. L. R. 378.

Statute creating presumption of negligence against railroad company as applicable to receiver operating road, 1 A. L. R. 1180.

56-1-2. Articles of incorporation—Contents.—The articles of incorporation of a railroad corporation proposing to purchase or construct a railroad shall include, in addition to the matters required to be stated in the articles of incorporation of corporations organized for pecuniary profit, the names of the places between which and of the counties through or in which such railroad lies or will be constructed, and a statement of its length as near as may be.

History: L. 1901, ch. 26, § 2; 1907, ch. 93, § 2; C. L. 1907, § 432; C. L. 1917, § 1226; R. S. 1933 & C. 1943, 77-0-2.

Collateral References.

Railroads—14.
74 C.J.S. Railroads § 10.

56-1-3. Stock subscriptions—Minimum requirements.—The secretary of state shall not issue a certificate of incorporation to any railroad corporation which proposes to construct a railroad until it shall appear to him by the affidavit of at least three of the incorporators that \$1000 for each mile in length of the railroad proposed to be constructed shall have been subscribed, and that ten per cent of the stock subscribed by each stockholder has been paid in.

History: L. 1901, ch. 26, § 2; 1907, ch. 93, § 2; C. L. 1907, § 432; C. L. 1917, § 1226; R. S. 1933 & C. 1943, 77-0-3.

1. Subscriptions to stock.

Capital stock of corporations excepting those created for mining and irrigation must represent full actual value, either in money or property, and subscribers for stock must pay one hun-

dred cents on dollar, or its equivalent, for stock subscribed for by them, and until so paid they are liable to creditors of corporation in proper proceeding for any balance remaining unpaid on their subscriptions. *Rolapp v. Ogden & N. W. R. Co.*, 37 U. 540, 110 P. 364.

Collateral Reference.

Railroads—14.

56-1-4. Construction required within limited time.—If a railroad corporation which proposes to construct a railroad shall not within three years after its incorporation begin the construction of its railroad and expend thereon an amount equal to at least \$300 for each mile of the proposed line referred to in its articles of incorporation, or if it shall fail to finish the road and put the same into full operation within ten years after its incorporation, its franchise as to all parts of its line not then constructed shall be deemed forfeited.

History: R. S. 1898 & C. L. 1907, § 438; C. L. 1917, § 1232; R. S. 1933 & C. 1943, 77-0-4.

Compiler's Note.

Under the parent act the three-year period was two years (Comp. Laws 1888, § 2358), but that was increased to three years as in the present section.

Comparable Provisions.

Idaho Code 1947, § 62-203 (requiring every railroad corporation, within two years after filing original articles of in-

corporation, to begin construction of its road; every year thereafter it must complete and put in full operation at least five miles of its road, until same is fully completed; failure to comply, for period of one year, forfeits its right to extend its road beyond point then completed).

Montana Rev. Codes 1947, § 72-208 (15 miles to be completed on each line, branch or extension each year subsequent to filing of articles of incorporation; corporations already organized are required to complete whole line of road within five years from passage of statute; within

seven years from date of filing articles, in case of corporation organized thereafter).

1. Computation of time.

Under former statute, held that ten-year period, within which railroad company was required to finish road and put it in full operation, began to run, in case of corporation resulting from consolidation of Utah and Colorado railroad corporations, only at time of its filing of its articles of incorporation. *Rio Grande Western R. Co. v. Telluride Power &*

Transmission Co., 16 U. 125, 51 P. 146, writ of error dismissed 175 U. S. 639, 44 L. Ed. 305, 20 S. Ct. 245.

2. Waiver of forfeiture.

Under this section, forfeiture of charter may be waived. *Dern v. Salt Lake City R. Co.*, 19 U. 46, 59, 56 P. 556, applying Comp. Laws 1876 and Comp. Laws 1888.

Collateral References.

Railroads \S 83.

74 C.J.S. Railroads \S 123.

56-1-5. General powers enumerated.—Every railroad corporation organized under the laws of this state shall, except as otherwise provided in this title and subject to the limitations and requirements hereof, have all the rights, privileges and powers, and be subject to all the duties and obligations, of corporations organized for pecuniary profit, and in addition thereto such railroad corporation shall have the following powers:

(1) To lay out, locate, relocate, construct, reconstruct, purchase, lease or otherwise acquire, and to own, maintain and operate railroads situated wholly or partly within or without this state and any branch or branches of such railroads, together with all such turnouts, yards and other facilities as shall be deemed necessary or convenient for use in connection therewith, and all property appurtenant to, or necessary or useful in connection with the construction, maintenance or operation of, such railroads; and in the case of purchase, to exercise and enjoy all the rights, powers, privileges and franchises, which at the time of the sale belonged to or were vested in the corporation or corporations last owning the properties sold, not inconsistent with the Constitution or laws of this state.

(2) To construct, purchase or lease spurs or branch lines of railroad connecting with its main line or any branch thereof, and to relocate any section or sections of its line, with the same power as in the case of original or first location, though such spurs or branch lines or relocated sections are not named or described in the articles of incorporation.

(3) To enter by its servants upon the real property of any person for the purpose of selecting an advantageous route for its main line or any extension or branch thereof or for the purpose of relocating the same, subject to responsibility for all damages resulting therefrom; and to condemn in the manner provided by law a right-of-way, not to exceed nine rods in width, with such additional lands as shall be necessary for depot grounds, roundhouses, shops and other necessary uses, or for the purpose of constructing necessary embankments, excavations, ditches, drains and culverts, or for the procuring of timber, stone, gravel or other essential materials, including water and water rights for its locomotives, cars, shops, depots or yards, together with all lands and rights-of-way necessary for the construction and maintenance of reservoirs or pipe or conduit lines for the storage and conveyance of such waters to the places where the same are required.

(4) To acquire by purchase, donation or otherwise all such real and personal property as shall be necessary for, or shall be given to aid or encourage the construction and maintenance of, its railroad, buildings and yards.

(5) To cross natural or artificial streams or bodies of water, streets, highways or railroads, which its road shall intersect, in such manner as to afford security for life and property; subject to the duty of immediately restoring such stream or body of water, street, highway or railroad to its former condition as nearly as may be.

(6) To join or unite its railroad with any other railroad, either before or after construction, at any points upon its route and upon the grounds of such other railroad corporation, with the necessary turn-outs, sidings, switches and other conveniences in furtherance of the objects of its connection; and every corporation whose railroad is or shall be hereafter intersected by any new railroad shall join with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor.

(7) To take and transport persons and property by steam, electric, animal or other power, or by any combination thereof, and to receive such compensation therefor as shall be reasonable and conformable to law, and to make such regulations regarding the movement of its trains or cars and the manner of transporting passengers and freight, the management of its property and the conduct of its business, as shall be reasonable and conformable to law.

(8) To merge or to consolidate with any other railroad corporation or corporations organized or existing under the laws of this or any other state or territory, or of the United States; provided, that the lines of such corporations shall not be competing but shall be substantially continuous or connective either by means of actual union of track or through the medium of any bridge, ferry, or line of railroad leased, operated or otherwise controlled by any or either of said corporations, or which any such corporation shall have the right by contract or otherwise to use or operate. If one or more of the corporations merging or consolidating is a foreign corporation, such merger or consolidation shall be authorized and ratified by such foreign corporation in the manner required by the laws of the jurisdiction under which it is incorporated.

(9) To lease, sell, convey and transfer its property and franchises or any part thereof to any railroad corporation not owning any competitive line in this state, whether organized under the laws of this state or of any other state, or of the United States, and to sell, convey and transfer to a corporation organized under the laws of any foreign country the lines of railroad owned by it and situated wholly in such foreign country.

(10) To acquire, own, maintain, operate and navigate steamships, sailing vessels and boats of every description, and generally to carry on the business of a common carrier by water.

(11) To issue bonds for such sums and payable at such times and places and drawing interest at such rates as the board of directors shall deem expedient, and for the purpose of securing the payment of such bonds and interest to execute trust deeds or mortgages or both upon the whole or any part of its lines, real property, rolling stock, vessels, machinery, franchises, income, profits and other personal property then owned or thereafter acquired. Such bonds and trust deeds or mortgages shall be valid according to their terms, notwithstanding the fact that the bonds may be sold below par value. A trust deed or mortgage made as aforesaid, to operate as notice to third persons, shall be recorded in the office of the recorder of each county in which any of the property affected by such trust deed or mortgage shall be situated, and need not be left or filed in said office. Any such mortgage or trust deed when made shall be a valid lien upon the real and personal property and chattels included therein, notwithstanding the fact that the possession of such personal property may remain with the mortgagor; and when recorded as aforesaid such record shall be notice to all persons of the existence of such mortgage or deed of trust according to its terms; provided, that corporations organized under the laws of this state, owning and operating street, suburban, or interurban railroads, including those that own and operate, with such railroads, power and lighting plants shall be deemed railroad companies, and their properties, railroad properties, within the meaning of this subdivision.

(12) To create, issue and dispose of preferred stock, special stock and income certificates, to such amounts and in such form and for such purposes, and as between the stockholders themselves, to make the same payable in respect of principal and dividends out of such class or character of assets and income, as shall be determined upon by its board of directors with the assent thereto of the holders of at least a majority in amount of the common stock; provided, that no increase of any preferred or special stock, or of any income certificates issued pursuant to this title, shall at any time be made without the assent thereto of the holders of at least a majority in amount of the preferred stock or special stock, or of the income certificates to be affected by such issue, as the case may be.

(13) To purchase or otherwise lawfully acquire, and to own, hold, pledge or otherwise dispose of, the stock or any part of the stock, bonds or other obligations of any corporation organized under the laws of this state or of the United States or of any other state or territory of the United States, which owns or operates by lease or otherwise any line or lines of steam, electric, street or interurban railroad or which directly or indirectly conducts any transportation business by land, water, or air and by whatever motive power or which owns or operates any union depot or station, any railroad terminal, wharves, docks or other shipping facilities, any steamships, steamboats or other water craft or any aircraft, landing field or other aviation facilities, or which may carry on an express or refrigeration business, or furnish cars or other facilities for refrigeration or storage of freight, or which may manufacture, sell, lease,

or otherwise provide railroad equipment; and upon the pledge or sale of such bonds or other obligations to guarantee the same in the discretion of its board of directors.

(14) To receive subscriptions for increases of stock on such terms as the board of directors or the stockholders shall authorize, payable in shares of the stock or in bonds or other obligations of any other corporation organized under the laws of this state or of the United States, or of any other state or territory of the United States, whose stock, bonds, or other obligations are authorized to be purchased or acquired by railroad corporations of this state; provided, that the stocks, bonds or other obligations of such other corporations to be received in payment and exchange for the stock so subscribed shall be of a par value at least equal to the par value of the stock subscribed, or of an actual or market value equal in the opinion of the board of directors to that of the stock so subscribed and issued, and such stock so issued shall for all purposes be deemed full-paid.

History: L. 1901, ch. 26, § 4; 1907, ch. 93, § 3; C. L. 1907, §§ 433, 434, 456x5; C. L. 1917, §§ 1227, 1228, 1263; R. S. 1933, 77-0-5; L. 1939, ch. 90, § 1; C. 1943, 77-0-5.

Compiler's Note.

The 1939 amendment made several material changes in text, the most extensive being to subsec. (13).

Cross-References.

Constitutional limitations, Const. Art. XII, § 1 et seq.

Constitutional provisions, Const. Art. XII, § 12.

Merger with competing lines forbidden, Const. Art. XII, § 13.

1. Operation and effect.

Subdivision (5) is merely declaratory of the common law. *Cook v. Salt Lake City*, 48 U. 58, 62, 157 P. 643.

Collateral References.

Railroads—18.

74 C.J.S. Railroads § 16.

Powers, generally, 44 Am. Jur. 227, Railroads § 16.

Constitutionality of statutes providing for consolidation or merger of public utility corporations, 66 A. L. R. 1568.

Deed to railroad company covering right-of-way, but otherwise appearing to be absolute conveyance, as conveying fee or easement, 84 A. L. R. 271.

Duty of railroad to operate side and switch tracks and spurs, 18 A. L. R. 722.

Judicial power in respect to consolidation or merger of railroads, 51 A. L. R. 1249.

Nature and extent of interest acquired by railroad in right-of-way by adverse possession or prescription, 127 A. L. R. 517.

Nonperformance of executory promise by railroad company as ground for cancellation or rescission of deed to it, 13 A. L. R. 566.

Period covered by covenant or condition subsequent for maintenance of railroad, 7 A. L. R. 817.

Power of public utility commission to require railroad company to grant or renew leases or other privileges on its right-of-way, 47 A. L. R. 109.

Power of state to require interstate carrier to make track connections with other roads, 22 A. L. R. 1078.

Powers of federal and state governments respectively as regards railroad stations, 39 A. L. R. 1372.

Right of abutting owner to compensation for railroad in street under constitutional provision against damaging property for public use without compensation, 22 A. L. R. 145.

Right of grantor of railroad right-of-way or his privy to recover damages for interference with surface water by construction of road, 19 A. L. R. 487.

Right of owner of fee to complain of use of railroad right-of-way as a place for driving or keeping livestock, 61 A. L. R. 731.

Right of railroad company to prevent operations for gas or oil or other mining operations on right-of-way, 61 A. L. R. 1068.

Right of railroad company to use or grant use of land in right-of-way for other than railroad purposes, 94 A. L. R. 522.

Right of railroad company to use right-of-way for housing or boarding employees or others, 59 A. L. R. 1287.

Right to give exclusive privilege of soliciting patronage at railroad stations or on trains, 15 A. L. R. 356.

Specific performance of contract by railroad company to build or maintain side-tracks, extension, or branch line, 4 A. L. R. 529.

Spur or branch track as visible easement or servitude, upon division of land, 32 A. L. R. 1347.

Status, rights, and obligations of freight forwarders, 141 A. L. R. 919.

Title or interest acquired by railroad in exercise of eminent domain as fee or easement, 155 A. L. R. 381.

56-1-6. Acquiring property, stock and obligations of competing lines.—

Nothing in this title contained shall be construed so as to permit or authorize any railroad company to acquire, own, hold or lease the railroad, property, rights or franchises of any competing line, nor the stocks, bonds or other obligations of any corporation owning or operating any line of railroad, ships, vessels or boats, competing with it or with any corporation whose stocks, bonds or other obligations it may hold.

History: L. 1907, ch. 93, § 3; C. L. 1907, § 434; C. L. 1917, § 1228; R. S. 1933 & C. 1943, 77-0-6.

Code Report; R. S. 1933 & C. 1943, 77-0-6.

Cross-References.

Consolidation of railroads, 16-5-3.

Constitutional prohibition, Const. Art. XII, § 13.

Collateral References.

Railroads⊕18.

74 C.J.S. Railroads § 16.

56-1-7. Amending articles—Effect.—Amending the articles of incorporation by adding new lines of route, altering the original route, or changing the termini, shall not be deemed an alteration of the original purpose of the corporation.

History: R. S. 1898 & C. L. 1907, § 435; C. L. 1917, § 1230; R. S. 1933 & C. 1943, 77-0-7.

Collateral References.

Railroads⊕19.

74 C.J.S. Railroads § 18.

56-1-8. Local franchise required.—No railroad shall use any road, street, alley or highway within any county, city or town except with the consent of the authorities of such county, city or town as provided by law; provided, that this section shall not be construed to prevent railroads from crossing at right angles, or as nearly as may be, any street, alley or highway across which its located line may pass.

History: R. S. 1898 & C. L. 1907, § 437; C. L. 1917, § 1231; R. S. 1933 & C. 1943, 77-0-8.

Comparable Provision.

Deering's Cal. Civ. Code, § 470 (two-thirds vote of town or city "authority" required in order to authorize railroad corporation to use street, alley or highway therein).

Cross-References.

Consent of local authorities required, Const. Art. XII, § 8.

Paving by railroads, 10-7-29 to 10-7-31.

Regulating tracks and granting franchises, 10-8-33.

Removal of tracks for nonuser, 10-8-82.

Rights-of-way over state lands, 65-2-1, 65-2-2.

1. Implied repeal.

This section was not impliedly repealed by Public Utilities Act, since there is no

repugnancy between the two sections and repeal by implication being question of legislative intent. Such repeal will not be so adjudged unless that intent clearly appears. Union Pac. R. Co. v. Public Service Comm., 103 U. 186, 134 P. 2d 469, 473.

The powers granted by this section have never been expressly revoked by repeal; nor were such powers impliedly repealed by the Public Utilities Act. On the contrary, that act recognizes the power of municipalities to grant franchises. Union Pac. R. Co. v. Public Service Comm., 103 U. 186, 134 P. 2d 469, 473.

Legislature, by expressly recognizing the power of municipalities to grant franchises in the Public Utilities Act itself, did not intend to repeal in toto the powers theretofore granted to cities and towns to grant franchises. Union Pac. R. Co. v. Public Service Comm., 103 U. 186, 134 P. 2d 469.

It will be noted that cities and towns are not given general power to grant franchises. The power given them is to grant franchises for the use of their streets for specific purposes to certain persons, companies or corporations, among which are railroad and street railroad companies. *Union Pac. R. Co. v. Public Service Comm.*, 103 U. 186, 134 P. 2d 469, 475.

2. Operation and effect of section.

This section is a limitation or restriction on the right of railroad company to build its track on a highway or street without permission of the authorities (*Barboglio v. Gibson*, 61 U. 314, 320, 213 P. 385), but it does not restrict right of railroad under 56-1-9 to construct its track upon highway in canyon pass. *Barboglio v. Gibson*, 61 U. 314, 213 P. 385.

3. Spur or switch track.

City council, by ordinance, may grant railroad company permission to construct

56-1-9. Right-of-way in canyons.—No railroad company whose right-of-way or whose track or roadbed upon such right-of-way passes through any canyon, pass or defile shall exclude any other railroad company from the use and occupancy of such canyon, pass or defile, for the purposes of its road, in common with the road first located, or from crossing its road at grade. And the location of such right-of-way through any canyon, pass or defile shall not cause the disuse of any wagon road or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway where such road or highway may be necessary for the public accommodation; and where any change in the location of any such wagon road or highway is necessary to permit the passage of any railroad through any canyon, pass or defile, said railroad company shall before entering upon the ground occupied by such wagon road or highway cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road; provided, that such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass or defile.

History: R. S. 1898 & C. L. 1907, § 440; C. L. 1917, § 1234; R. S. 1933 & C. 1943, 77-0-9.

Comparable Provision.

Montana Rev. Codes 1947, § 72-207 (railroad corporation may not exclude other such corporation from passage, on equitable terms, through canyon, pass or defile; damages may be awarded where passage of railroad causes disuse or change of location of public wagon road; where companies use same track or bed in passing through canyon, pass, or defile, compensation is made, from one to the other, only for actual damage by so doing).

and operate switch or spur track in city's streets. *Stockdale v. Rio Grande W. R. Co.*, 28 U. 201, 77 P. 849. See also *Cereghino v. Oregon Short Line R. Co.*, 26 U. 467, 73 P. 634, 99 Am. St. Rep. 843; *Whit-meyer v. Salt Lake & O. R. Co.*, 46 U. 491, 151 P. 48.

4. Power and jurisdiction of commission.

In *Provo City v. Department of Business Regulation*, — U. —, 218 P. 2d 675, held that public service commission had jurisdiction of dispute between city and railroad arising out of the closing of "street-railroad" crossing located within city limits; that under 54-4-15, commission was required to hear and determine the controversy; and that the rights of the parties had to be determined before that body.

Collateral References.

Railroads—75(1).

74 C.J.S. Railroads § 107.

Cross-Reference.

Rights-of-way over state lands, 65-2-1, 65-2-2.

1. Compliance with section.

County commissioners and not railroads are judges as to whether this section is complied with. *Barboglio v. Gibson*, 61 U. 314, 213 P. 385.

2. Consent of freeholders.

In action against railroad company for obstruction of old county road in which construction of former statute was involved, it was held that this section granted certain privileges to railroad

to construct its track upon highway in canyon, pass, or defile which were not limited by 17-5-8 providing for consent of freeholders when public roads were changed, or by 56-1-8 providing that railroad should not use any road without consent of authorities; right under this section was limited only by this section, so that where railroad complied with it with reference to construction of new

road, freeholder along old road was not entitled to injunction for removal of obstruction but his remedy was limited to damages. *Barboglio v. Gibson*, 61 U. 314, 213 P. 385.

Collateral References.

Railroads⊕80.

74 C.J.S. Railroads § 114.

56-1-10. Maps of final location to be filed.—Every company constructing or operating a railroad in this state shall within a reasonable time after the final location of the road file in the office of the secretary of state a map thereof showing the route decided upon and the land obtained for the use thereof; and like maps of the several parts thereof located in the several counties through or into which the road may be extended shall be filed in the offices of the recorders of such counties respectively. Maps and profiles certified by the chief engineer, the president and the secretary of the company shall be filed in the office of the company subject to examination by any person interested.

History: R. S. 1898 & C. L. 1907, § 441; C. L. 1917, § 1235; R. S. 1933 & C. 1943, 77-0-10.

Collateral References.

Railroads⊕53.

74 C.J.S. Railroads § 63.

Comparable Provision.

Deering's Cal. Civ. Code, § 466 (similar).

56-1-11. Highway crossings—Liability for damages due to defects.—Every railroad company shall be liable for damages caused by its neglect to make and maintain good and sufficient crossings at points where any line of travel crosses its road.

History: R. S. 1898 & C. L. 1907, § 445; C. L. 1917, § 1237; R. S. 1933 & C. 1943, 77-0-11.

Cross-References.

Gates at crossings, 10-8-83.

Regulation of crossings, 10-8-34 et seq.

1. Words and phrases defined.

Instruction that "good and sufficient crossing" is crossing that is sufficient and ordinarily safe for traveling public to pass to and fro over, keeping in mind its location, whether in sparsely settled or populous locality, and the character and volume of traffic that ordinarily may be expected to pass over it, held proper. *Denkers v. Southern Pac. Co.*, 52 U. 18, 171 P. 999.

2. Duty of railroad.

One driving his sheep along public street through which railroad ran was not trespasser, and railroad owed duty not only to operate its train with due care after discovering sheep on track and in perilous situation, but also to use care in operation of its train in anticipation of dangers that might reasonably be

expected to arise from proper use of highway by public. *Smith v. San Pedro, L. A. & S. L. R. Co.*, 35 U. 390, 100 P. 673.

Under this section, railroad company has duty to travelling public to maintain good and sufficient crossing, and company is liable for unsafe crossing regardless of materials used for its construction or maintenance. *Van Wagoner v. Union Pacific R. Co.*, 112 U. 189, 186 P. 2d 293, opinion amended and rehearing denied 112 U. 218, 189 P. 2d 701.

3. Contributory negligence.

In action by plaintiff driving horse hitched to covered milk wagon for personal injuries sustained as result of being struck at railroad crossing, where plaintiff was driving alongside of railroad track in place of safety, and, without looking, attempted to cross track in front of approaching engine, and was struck, held, plaintiff was negligent as matter of law, and was not entitled to recover on ground that defendant, by exercise of ordinary care, could have seen him going into place of danger, and could have prevented accident. *Wilkin-*

son v. Oregon Short Line R. Co., 35 U. 110, 99 P. 466. (Straup, C. J., dissenting.)

4. Pleading.

In action to recover damages alleged to have been sustained by railroad's negligence in running train of cars over plaintiff's sheep on public highway, held averments in complaint that defendant, knowing sheep were on track, so negligently and carelessly ran, managed and operated and controlled train as to run it into sheep and injure them, stated good cause of action. *Smith v. San Pedro, L. A. & S. L. R. Co.*, 35 U. 390, 100 P. 673.

5. Questions of law and fact.

There being no statute specifically defining what a "good and sufficient" crossing consists of, the question of whether a certain crossing is good and sufficient is ordinarily one for jury to determine from evidence adduced, unless it clearly appears that but one conclusion only can be reasonably drawn from evidence respecting condition of crossing, in which case it becomes question of law for court. *Denkers v. Southern Pac. Co.*, 52 U. 18, 171 P. 999.

6. Instructions.

In wrongful-death action against railroad company arising out of truck-train collision at crossing, instruction that crossing must be maintained to width equal to main-travelled portion of highway was substantially in accordance with this section and 27-3-2, and refusal to instruct jury that railroad company had duty to maintain crossing for width of 16 feet was not error, especially where width of crossing had no causal connection with collision. *Van Wagoner v. Union Pacific R. Co.*, 112 U. 189, 186 P. 2d 293, opinion amended and rehearing denied, 112 U. 218, 189 P. 2d 701.

Failure to give requested instruction in words of city ordinance on duty to plank or pave crossing with suitable paving material was not prejudicial error in wrongful-death action against railroad company arising out of truck-train collision at crossing, where instruction on maintenance of crossing was given in words of this statute, and was adequate to permit jury to find for plaintiffs if jurors believed from evidence that deceased was stalled because of improperly maintained crossing. (Rev. Ord. of American Fork, 1929, § 539.) *Van Wagoner v. Union Pacific R. Co.*, 112 U. 189, 186 P. 2d 293, opinion amended and rehearing denied, 112 U. 218, 189 P. 2d 701.

Collateral References.

Railroads—113(2).

74 C.J.S. Railroads § 472.

Railroads on, across, or near highway or street, 44 Am. Jur. 511, Railroads §§ 289-299.

Constitutionality of statute requiring railroad to construct and maintain private crossing, 12 A. L. R. 227.

Constitutional power to compel railroad company to relocate or reconstruct highway crossing or to pay or contribute to expense thereof, 109 A. L. R. 768.

Contributory negligence in disregarding or failing to await complete operation of safety gates or other safety appliance at crossing or draw, 13 A. L. R. 942.

Contributory negligence of one who attempts to cross railroad tracks just after a train, or part of a train, has passed over the crossing, 56 A. L. R. 543.

Crossing accidents:

—crossing tracks just after train or part of train has passed as contributory negligence, 56 A. L. R. 543.

—failure to await complete operation of gates or safety appliances as negligence, 13 A. L. R. 942.

—failure to stop, look and listen as negligence per se, 41 A. L. R. 405.

—infrequent use of crossing as affecting duties and liabilities, 52 A. L. R. 751.

—leaving cars so that they obstruct view as negligence, 47 A. L. R. 287.

—person who has walked or intends to walk along track injured, 9 A. L. R. 1322.

—traveler's ignorance of existence of crossing as affecting liability, 40 A. L. R. 1309.

Demonstrative evidence on issue of negligence or contributory negligence at railroad crossing, 55 A. L. R. 1340.

Duty and liability of railroad company to one passing around train which is blocking crossing, 16 A. L. R. 1054.

Duty of railroad before discovering presence of licensee or trespasser using foot-path, along or across track, commonly used, but not a public way, 120 A. L. R. 1076.

Duty of railroad to maintain gates, gongs, or other safety devices at crossings, 60 A. L. R. 1096.

Duty to maintain safety devices at railroad crossing in addition to or in excess of statutory requirements, 71 A. L. R. 369.

Extent and character of use of farm or other private crossing over railroad right-of-way, 139 A. L. R. 460.

Failure of automatic signaling device at crossing to operate as affecting liability of railroad company for injury, 99 A. L. R. 729.

Failure of train employee to discover in time to avert accident that object seen on or near track is human being, as negligence, 70 A. L. R. 1116.

Highway leading to but not crossing tracks, liability for accidents at such points, 47 A. L. R. 863.

Infrequent use of crossing by railroad company as affecting its duty or liability to traveler at crossing, 52 A. L. R. 751.

Interpretation of statute relating to construction or maintenance of crossing in case of intersecting railroad or street railway lines, 40 A. L. R. 712.

Liability of railroad company to property owner for change of grade incident to construction of overhead or underground crossing, 57 A. L. R. 657.

Liability to trespasser or bare licensee as affected by distinction between active and passive negligence, 49 A. L. R. 778.

Negligence in leaving cars where they obstruct view of crossing, 47 A. L. R. 287.

Part or extent of highway adjoining railroad crossing for condition of which railroad is responsible, 105 A. L. R. 547.

Person passing around train which blocks crossing, duty and liability to, 16 A. L. R. 1054.

Power of municipality to assume the duty of providing and maintaining railroad crossing, 1 A. L. R. 316.

Presumption as to due care by person killed at railroad crossing, 84 A. L. R. 1221.

Reasonableness of regulation of speed of railroad train, 20 A. L. R. 1222.

Right in respect of private crossing in absence of statutory or contractual provision in that regard where land is taken by or deeded to railroad for right-of-way, 122 A. L. R. 1171.

Right of railroad at crossing to construct and maintain piers, pillars, or abutments within street or highway, 62 A. L. R. 1519.

Road vehicle running into train or car standing on crossing, 99 A. L. R. 1454.

State of weather as affecting liability for injury to one struck by train or street-car, 20 A. L. R. 1064.

Status of one at railroad crossing who has walked or intends to walk along tracks, 9 A. L. R. 1322.

Sufficiency of complaint in action against railroad for killing or injuring person or livestock as regards time, direction and identification of train, 115 A. L. R. 1074.

Traveler's ignorance of existence of railroad crossing as affecting liability for injury, 40 A. L. R. 1309.

56-1-12. Injury to livestock—Notice.—Every person operating a railroad within this state that injures or kills any livestock of any description by the running of any engine or engines, car or cars, over or against any such livestock shall within three days thereafter post at the first railroad station in each direction from the place of such injury or killing in some conspicuous place on the outside of such station a notice in writing of the number and kind of animals so injured or killed, with a full description of each, and the time and place as near as may be of such injury or killing. Such notice shall be dated and signed by some officer or agent of such railroad, and a duplicate thereof shall be filed with the county clerk of the county in which stock is so injured or killed. Every person wilfully failing, neglecting or refusing to comply with the provisions of this section is guilty of a misdemeanor and shall be fined in any sum not exceeding \$50.

History: R. S. 1898 & C. L. 1907, §§ 68, 69; C. L. 1917, §§ 110, 111; R. S. 1933 & C. 1943, 77-0-12.

Cross-Reference.

Cars transporting swine to be disinfected, 4-7-13.

Collateral References.

Railroads—405.

74 C.J.S. Railroads § 548.

Dogs as within contemplation of stat-

utes as to duty of railroads as regards livestock, 46 A. L. R. 1536.

Duty to check speed of train upon discovering livestock on or near tracks, 23 A. L. R. 148.

Liability of interurban road for killing or injuring livestock running at large, 25 A. L. R. 1506.

Sufficiency of complaint in action against railroad for killing or injuring person or livestock as regards time, direction and identification of train, 115 A. L. R. 1074.

56-1-13. Fencing right-of-way—Gates.—Every railroad company shall erect and maintain a fence on each side of its right-of-way where the same passes through lands owned and improved by private owners, and at all public road crossings shall connect the same with cattle guards. Such fence shall be not less than four and one-half feet in height and may be constructed of barbed or other fencing wire with not less than five wires, and good, substantial posts not more than one rod apart with a stay midway between the posts attached to the wires to keep said wires in place; and whenever such railroad company shall provide gates for private crossings for the convenience of the owners of the land through which such railroad passes, such gates shall be so constructed that they may be easily operated; and every railroad company shall be liable for all damages sustained by the owner of any domestic animal killed or injured by such railroad in consequence of the failure to build or maintain such fence. The owner of such lands shall keep such gate closed at all times when not in actual use, and if such owner fails to keep such gates closed, and in consequence thereof, any animal owned by him strays upon such railroad, and is killed or injured, such owner shall not be entitled to recover damages therefor.

History: L. 1901, ch. 86, §§ 1, 2; 1903, ch. 83, §§ 1, 2; C. L. 1907, §§ 456x, 456x1; L. 1913, ch. 74, § 1; C. L. 1917, §§ 1253, 1254; R. S. 1933 & C. 1943, 77-0-13.

Comparable Provisions.

Deering's Cal. Civ. Code, § 485 (good and sufficient fences must be maintained; in absence thereof, railroad company must pay fair market price for killed or maimed cattle, unless occurring on public land, and unless occurring through neglect or fault of owner of animals).

Idaho Code 1947, § 62-406 (requiring erection of fences not less than four feet high; also cattle guards; unless fences, openings, gates, farm crossings and cattle guards are properly installed and maintained, the railroad company or corporation is liable in civil action for injury to livestock; where properly installed, no liability for such damage unless negligently or wilfully done; proof of wounding or maiming or killing of animals is prima facie evidence of negligence or wilfulness on part of railroad company or corporation).

Iowa Code 1950, § 478.2 (requiring fences so connected with cattle guards at public railroad crossings as to prevent livestock getting upon the tracks); § 8003 (fences to be not less than 54 inches high).

Montana Rev. Codes 1947, § 72-401 (requiring good and legal fences; and cattle guards at crossings; in absence thereof railway company must pay fair market price of killed or maimed cattle or other domestic animals, unless occurring through neglect or fault of owner of animals);

§ 72-402 (liability for negligent injury to animals; killing or injury is prima facie evidence of negligence).

1. Validity.

A former statute making the railroad liable regardless of any fault on its part was held invalid. *Jensen v. Union Pac. R. Co.*, 6 U. 253, 21 P. 994, 4 L. R. A. 724.

2. Purpose of section.

Purpose of section seems to be to require a fence where the railroad either by dividing private lands or breaking the owner's close by taking a portion thereof created a risk to livestock which did not otherwise exist within the boundaries of the private owner's close. *Wilde v. Union Pac. R. Co.*, 96 U. 164, 84 P. 2d 1085.

3. Classification of action.

While action under this section is statutory in nature, yet where only legal issues, as distinguished from equitable, were raised by the pleadings, the action must be classified as essentially one at law. *J. Nebeker & Son v. Los Angeles & S. L. R. Co.*, 99 U. 226, 104 P. 2d 230.

4. Duty to fence in general.

Formerly it appears that there was no requirement as to fencing; it was purely a matter of negligence. See *Johnson v. Rio Grande Western R. Co.*, 7 U. 346, 26 P. 926.

Under the language of the former statute, a railroad was required to fence its track where the land in the vicinity of

the place where stock of plaintiff was killed was settled upon, owned and occupied by farmers, even though the particular place was not under cultivation, but formed a part of tracts which were under cultivation. *Stimpson v. Union Pac. R. Co.*, 9 U. 123, 33 P. 369.

The mere fact that railroad company fails to comply with its statutory duty to fence its right-of-way where its track passes through land of others, or in case it has complied with that duty, fails to maintain its fences or to keep them in repair, does not constitute contributory negligence on part of owner to turn his livestock into his fields adjacent to railroad merely because he knows railroad company has failed in its duty either in constructing or in keeping right-of-way fence in repair. *Knight v. Southern Pac. Co.*, 52 U. 42, 172 P. 689.

Railroad is not excused from fencing its right-of-way because of its passage through incorporated city or town, except where it is unreasonable or improper that road should be fenced. *Edmunds v. Salt Lake & L. A. R. Co.*, 58 U. 30, 196 P. 1019, 16 A. L. R. 928.

Duty to fence is entirely statutory. *Wilde v. Union Pac. R. Co.*, 96 U. 164, 84 P. 2d 1085.

Under present section, railroad is under no duty to fence where its right-of-way goes alongside of, but not through or over, lands which were or had been privately owned. *Wilde v. Union Pacific R. Co.*, 96 U. 164, 84 P. 2d 1085.

5. Words and phrases defined.

Intersection of two railroads held not "public crossing" so that such railroad companies were not liable for the killing of cattle on ground that such crossing was not fenced. *Edwards v. Salt Lake & U. R. Co.*, 70 U. 496, 261 P. 445. (Cherry, J., dissenting.)

"Passes through" may mean more than dividing lands privately owned, so the same owner will have lands on both sides of the right-of-way; it may apply where the railroad is laid out along the dividing line between two owners, lapping off a piece from each, or where it takes a strip of privately owned land along one side and where the other side of the right-of-way abuts on publicly owned lands; it could hardly mean going along the boundary of privately owned lands but in no way breaking the inclosure of fence or the private owners' boundary lines. *Wilde v. Union Pacific R. Co.*, 96 U. 164, 84 P. 2d 1085.

6. Station grounds.

Under the language of the present section, railroad is not required to fence its

station grounds, where right-of-way at place in question cannot be fenced without public inconvenience and an interference with free access to depot buildings and grounds. *Reid v. San Pedro, L. A. & S. L. R. Co.*, 42 U. 431, 132 P. 253, applying *Comp. Laws 1907*, § 456x. See *Roberts v. Salt Lake & O. R. Co.*, 53 U. 30, 176 P. 856.

Section is inapplicable to railroad station grounds. *J. Nebeker & Sons v. Los Angeles & S. L. R. Co.*, 99 U. 226, 104 P. 2d 230.

7. Judgment.

Failure of railroad to construct fence and cattle guard at a point between two depots justified judgment against company for death of animals struck by train on right-of-way. *J. Nebeker & Son v. Los Angeles & S. L. R. Co.*, 99 U. 226, 104 P. 2d 230. (Moffat and Pratt, JJ., dissenting.)

8. Duty to maintain and repair fence.

Railroad which voluntarily constructed wing fences at private farm crossings for owner's convenience did not thereby also impliedly agree to maintain them and to keep them in good repair for all time. *Knight v. Southern Pac. Co.*, 52 U. 42, 172 P. 689.

9. Cattle guards.

Under this section, if cattle get onto the right-of-way by reason of the defective condition of the cattle guards or the connecting fences, and without fault of the owner, the company is, ordinarily, liable. *Preece v. Oregon Short Line R. Co.*, 48 U. 551, 161 P. 40.

Former statute imposed no duty upon railroad either to put in cattle guards or to construct wing fences at private farm crossings. *Knight v. Southern Pac. Co.*, 52 U. 42, 172 P. 689.

10. Gates.

In action to recover damages for killing of certain cattle by defendant railroad, held, if animals entered upon right-of-way through open gate, defendant could not be held liable for loss, in absence of negligence on part of trainmen at time of accident. *Reid v. San Pedro, L. A. & S. L. R. Co.*, 39 U. 617, 118 P. 1009.

Under this section, where gates are placed by a railroad company for the convenience of the landowner, "such owner shall keep such gates closed at all times when not in actual use," and if by reason of his failure, animals are injured or killed, he cannot recover any damages. That duty does not rest upon the railroad company. *Preece v. Oregon Short Line R. Co.*, 48 U. 551, 569, 161 P. 40.

In action against railroad to recover damages for alleged negligent killing of horses on right-of-way, where plaintiffs knew that if their horses kept in pasture should get through gates they would pass over defective wing fence and go into right-of-way and railroad track of defendant, and railroad's section foreman told them it was not his business to repair wing fence, held, owners of horses were barred from recovery because of contributory negligence. *Knight v. Southern Pac. Co.*, 52 U. 42, 172 P. 689.

11. Jurisdiction of justice of the peace.

Where complaint, in action before justice of the peace against railroad for killing plaintiff's horse at a point where the road was not fenced, alleged that railroad "passed through lands owned and improved by private owners," the denial of such allegation did not raise a material issue of freehold, ousting the justice of jurisdiction, as provided by R. S. 1898, § 3674. *Oregon Short Line R. Co. v. District Court of Third Judicial Dist.*, 30 U. 371, 85 P. 360.

12. Pleading.

Action brought under this section for destruction of livestock due to alleged failure of railroad to fence its right-of-way dismissed where plaintiff failed to allege sufficient facts to show defendant's duty to fence, and that the destruction was due to such breach of duty, and simply alleged that cattle entered the right-of-way at a place to plaintiff unknown. *Wilde v. Union Pacific R. Co.*, 96 U. 164, 84 P. 2d 1085.

13. Burden of proof.

In suit against railroad company for horse killed at public railroad crossing, because of failure of railroad to fence station grounds, burden of proof was on railroad to show extent of space that was necessary to keep open for station grounds. *Roberts v. Salt Lake & O. R. Co.*, 53 U. 30, 176 P. 856.

14. Questions of law and fact.

Under this section, where the evidence is conflicting, the questions of negligence and contributory negligence are properly left to the jury. *Wines v. Rio Grande Western R. Co.*, 9 U. 228, 33 P. 1042.

Whether failure to comply with statutory requirements was proximate cause of accident is for jury, as, for example, in action for killing livestock, whether fail-

ure to ring engine bell was proximate cause. *Jeffs v. Rio Grande Western R. Co.*, 9 U. 374, 35 P. 505.

While courts must declare as matter of law that fences cannot be put and maintained at public road crossings and at stations and depot grounds, yet controversy with respect to whether certain space which it is claimed should remain open for station grounds, or for safety and convenience of trainmen in switching and in making up trains, is ordinarily question of fact for jury to determine. *Roberts v. Salt Lake & O. R. Co.*, 53 U. 30, 176 P. 856.

Decisions from other Jurisdictions—Iowa.

In an action for the killing of livestock on the ground that the fastenings of a gate separating the pasture from the adjacent right-of-way were defective, evidence merely that the animals had escaped to the track where they were killed and that the gate was found open was not sufficient to go to the jury, as a verdict cannot be founded on mere theory or supposition. *Hughes v. Chicago, B. & Q. R. Co.*, 215 Iowa 741, 246 N. W. 769.

Judgment against railroad, for loss of cow killed on its right-of-way by one of its cars, was affirmed, where evidence justified court in finding that cow entered upon right-of-way at place in pasture where fence was down. *McSweyn v. Des Moines & Central Iowa R. Co.*, — Iowa —, 288 N. W. 398.

Collateral References.

Railroads—§411(1).

74 C.J.S. Railroads § 560.

Duty to fence and provide cattle guards, 44 Am. Jur. 367, Railroads § 151 et seq.

Duty of railroad to fence track as against children, 16 A. L. R. 944.

Duty of railroad to fence tracks within limits of municipality, 16 A. L. R. 933.

Extent and character of use of farm or other private crossing over railroad right-of-way, 139 A. L. R. 460.

Failure to fence as rendering railroad company liable for damage to or by livestock after leaving right-of-way, 24 A. L. R. 1057.

Liability of railroad company where fence or cattle guard becomes ineffective because of snow, 26 A. L. R. 679.

Sufficiency as to type of cattle guards at public or private crossings, 75 A. L. R. 936.

56-1-14. Locomotives—Equipment required—Definition of locomotive—Power of local authorities to regulate and control signals at crossings—Penalties for violation.—Every locomotive shall be provided with a bell which shall be rung continuously from a point not less than 80 rods from

any city or town street or public highway grade crossing until such city or town street or public highway grade crossing shall be crossed, but, except in towns and at terminal points, the sounding of the locomotive whistle or siren at least one-fourth of a mile before reaching any such grade crossing shall be deemed equivalent to ringing the bell as aforesaid; during the prevalence of fogs, snow and dust storms, the locomotive whistle shall be sounded before each street crossing while passing through cities and towns. All locomotives with or without trains before crossing the main track at grade of any other railroad must come to a full stop at a distance not exceeding 400 feet from the crossing, and must not proceed until the way is known to be clear; two blasts of the whistle or two sounds of the siren shall be sounded at the moment of starting; provided, that whenever interlocking signal apparatus and derailing switches or any other crossing protective device approved by the public utilities commission is adopted such stop shall not be required.

Provided, that local authorities in their respective jurisdiction may by ordinance approved by the public service commission provide more restricted sounding of bells or whistles or sirens than is provided herein and may prescribe points different from those herein set forth at which such signals shall be given and may further restrict such ringing of bells or sounding of whistles or sirens so as to provide for either the ringing of a bell or the sounding of a whistle or of a siren or the elimination of the sounding of such bells or whistles or sirens or either of them, except in case of emergency.

The term locomotive as used herein shall mean every self-propelled steam engine, electrically propelled interurban car and so-called diesel operated locomotive.

Every person in charge of a locomotive violating the provisions of this section is guilty of a misdemeanor, and the railroad company shall be liable for all damages which any person may sustain by reason of such violation.

History: R. S. 1898 & C. L. 1907, § 447; C. L. 1917, § 1239; L. 1931, ch. 4, § 1; R. S. 1933 & C. 1943, 77-0-14; L. 1943, ch. 82, § 1.

Compiler's Note.

The 1943 amendment added the second and third paragraphs, and made minor changes in phraseology.

Cross-References.

Crossing gates, 10-8-83.
Regulation of crossings, 10-8-34 to 10-8-37.

Rolling stock deemed personalty, Const. Art. XII, § 14.

1. Applicability of section.

This provision applies to locomotives propelled by electricity as well as locomotives propelled by steam. *Shortino v. Salt Lake & U. R. Co.*, 52 U. 476, 174 P. 560.

The applicability of this section is not limited to "main line crossings." *Hickman v. Union Pac. R. Co.*, — U. —, 213 P. 2d 650.

2. Respective duties of the parties.

The rights, duties and obligations of railroads and travelers upon intersecting highways are reciprocal, and no greater degree of prudence is required of one than of the other. *Olsen v. Oregon Short Line & U. N. R. Co.*, 9 U. 129, 33 P. 623.

Although deceased truck driver was entitled to rely to some extent upon blinker light signal established by defendant railroad at public crossing, he was not thereby relieved of duty to exercise reasonable care for his own safety, and failure of signal to operate so as to warn deceased of approaching train was not invitation for him to proceed blindly across tracks heedless of his own safety. *Holmgren v. Union Pacific R. Co.*, 114 U. 262, 198 P. 2d

459, following *Pippy v. Oregon Short Line R. Co.*, 79 U. 439, 11 P. 2d 305, and *Drummond v. Union Pacific R. Co.*, 111 U. 289, 177 P. 2d 903.

3. Stop, look and listen.

Circumstances might arise where it would be the duty of a person crossing a railroad track to stop, look and listen before crossing. But it is not an absolute rule of law that a person so crossing must stop and listen to see if a train is coming, but he is simply required to exercise such care and prudence as under the circumstances an ordinarily prudent man would exercise. *Olsen v. Oregon Short Line & U. N. R. Co.*, 9 U. 129, 33 P. 623.

4. Effect of noncompliance by railroad.

A failure on part of railroad to ring bell or sound whistle as required by this section is negligence, rendering company liable, in absence of contributory negligence of plaintiff. *Bitner v. Utah Cent. R. Co.*, 4 U. 502, 11 P. 620.

Failure of railroad to comply with requirements of this section is negligence, and a party injured by such negligence is entitled to recover unless he himself is guilty of contributory negligence. *Olsen v. Oregon Short Line & U. N. R. Co.*, 9 U. 129, 33 P. 623.

As to failure of train crew to blow whistle or ring bell as negligence, and submission of question to jury, see *Van Wagoner v. Union Pacific R. Co.*, 112 U. 189, 186 P. 2d 293, opinion amended and rehearing denied, 112 U. 218, 189 P. 2d 701, involving issue as to alleged failure of train crew to maintain proper lookout to avoid collision with truck at crossing.

5. Presumptions.

In action by plaintiff, driving horse hitched to covered milk wagon, for personal injuries sustained as result of being struck at railroad crossing, it could not be presumed, in absence of proof, that crossing at which plaintiff was injured by defendant's alleged failure to give signals was one where signals were required. *Wilkinson v. Oregon Short Line R. Co.*, 35 U. 110, 99 P. 466. (*Straup, C. J.*, dissenting.)

6. Questions of law and fact.

The questions of negligence and contributory negligence under this section are for the jury, and the finding of the jury will not be disturbed on appeal. *Smith v. Rio Grande Western R. Co.*, 9 U. 141, 33 P. 626.

In action for wrongful death of decedent who was fatally injured when, at highway crossing, he was struck by defendant's railroad train, held that deter-

mination of question of whether engine whistle was sounded or engine bell was rung as train approached crossing was solely within province of jury. *Haun v. Rio Grande Western R. Co.*, 22 U. 346, 62 P. 908.

Decisions from other Jurisdictions.

— Federal.

Failure to ring bell or sound whistle, as required by section 60-412 of the Idaho Code, constitutes negligence per se. *Judd v. Oregon Short Line R. Co.*, 4 F. Supp. 657.

— California.

When a railroad has undertaken to warn travelers of the approach of its trains by means of a crossing device, such as an automatic signal, upon which the public is encouraged to rely, failure to use due care in maintenance of such device may constitute negligence regardless of fact that it may have given other warning of train's approach. *Will v. Southern Pac. Co.*, 18 Cal. 2d 468, 116 P. 2d 44.

It is true that the presence of fog or other unusual climatic conditions, which obscure the view or impede the hearing, makes it more important to blow the whistle or ring the bell of an engine as a warning upon approaching a country crossing; however, such warning signals are ordinarily deemed to be adequate notice, and a train is not required to stop or slacken its speed at country crossings merely because of the presence of fog. *Hoffman v. Southern Pac. Co.*, 101 Cal. App. 218, 281 P. 681.

Instruction was fatally defective in failing to inform the jury that negligent omission to ring bell or blow whistle must become proximate cause of accident in order to create liability on part of railway company; and in failing to inform jury that, if deceased, guest in car with which passenger train collided, was guilty of contributory negligence, no liability would attach even though the company was guilty of negligence in failing to comply with the statute. *Smellie v. Southern Pac. Co.*, 128 Cal. App. 567, 18 P. 2d 97.

— Idaho.

Although failure to conform to section 60-412 of the Idaho Code constitutes negligence, the facts at bar justified trial judge in granting defendant's motion for directed verdict, which was followed by judgment of dismissal, it appearing that the minor decedent drove his truck in front of defendant's train when he saw, or could have seen and known, that by so doing he was endangering his life; that his injury and death were due to his negligence; and that when he started across

the track, defendant's fireman immediately gave the alarm to the engineer who did everything in his power to avoid the accident. *Allan v. Oregon Short Line R. Co.*, 60 Idaho 267, 90 P. 2d 707.

— Iowa.

The fact that, in approaching a crossing, a railroad train gives such signals as are required by statute, does not necessarily absolve those in charge of it from giving such other and additional signals or warnings as ordinary care and prudence would dictate under the circumstances of the particular case. Such matter is dependent on the character of the crossing, the number, kind, and efficacy of the signals required, the speed of the train, and the surrounding circumstances. *Glanville v. Chicago, R. I. & P. R. Co.*, 196 Iowa 456, 193 N. W. 548.

Where a crossing is unusually dangerous, a railroad, in the exercise of ordinary care, is required to give notice or warning, in addition to the statutory signals. *Butters v. Chicago, M. St. P. & P. R. Co.*, 214 Iowa 700, 243 N. W. 597.

— Montana.

Although failure of defendant to comply with the statute requiring blowing of whistle and sounding of bell on approaching crossing is negligence per se, the mere fact that defendant is proven negligent does not establish plaintiff's right to recover; he must go further and show that defendant's alleged negligence was the proximate cause of injuries received. *Stroud v. Chicago, M. & St. P. R. Co.*, 75 Mont. 384, 243 P. 1089.

56-1-15. Fire caused by sparks emitted.—In any action for damages on account of fire caused by sparks emitted from locomotive engines on a steam railroad proof that the fire occurred and was caused by sparks emitted from a locomotive engine operated by such railroad shall constitute prima facie evidence of negligence on the part of such railroad.

History: L. 1919, ch. 24, § 1; R. S. 1933 & C. 1943, 77-0-15.

Comparable Provision.

Iowa Code 1950, § 479.126 (making railway corporation liable for damages sustained on account of loss of, or injury to, property occasioned by fire set out or caused by operation of railway).

1. Duty resting upon railroad.

It is duty of railroad company to keep its right-of-way free from dry grasses and other combustible materials in order that fire may not be set on its right-of-way, and if it negligently permits dry grasses and other combustible material to

Plaintiff has burden of proving defendant's violation of section 6521 of the Montana Revised Codes requiring sounding of whistle and ringing of bell; and, although negative testimony may be sufficient to establish such issue, the attendant circumstances must be such as to afford a reasonable opportunity to hear the warning signals. *Grant v. Chicago, M. & St. P. R. Co.*, 78 Mont. 97, 252 P. 382.

Collateral References.

Railroads—244.

74 C. J. S. Railroads § 428.

Applicability to car or engine driven on rails by motive power other than steam, of statute relating to crossing signals or other precautions at approach to crossing, 73 A. L. R. 105.

Customary or statutory signal from train as measure of railroad's duty as to warning at highway crossing, 5 A. L. R. 2d 112.

Failure or delay in sounding crossing signals as affecting liability of railroad company to persons not crossing nor about to cross track, 66 A. L. R. 811.

Negligence in leaving live locomotive unattended, 24 A. L. R. 124.

Railroad lookout statutes as applicable to switching operations, 1 A. L. R. 2d 621.

Running past stop signal as wanton or wilful misconduct rendering railroad company liable for injury to trespasser, 41 A. L. R. 1354.

State of weather as affecting liability for injury to one struck by train or street-car, 20 A. L. R. 1064.

Validity and construction of railroad stop statute, 2 A. L. R. 156.

accumulate and remain on its right-of-way, and same takes fire from one of its passing engines and is communicated to adjoining farm, where it destroys property of owner without negligence on his part, railroad is liable. *Smith v. Ogden & N. W. R. Co.*, 33 U. 129, 93 P. 185.

2. Pleading and proof.

A complaint is not demurrable under this section for failure to allege precise defects in engine which it is alleged caused the sparks or fire to escape therefrom, or in the management thereof by the engineer, for reason that same is entirely under the control and management of the defendant. More especially is this

true where no prejudice is shown to have resulted from general statements in complaint. *Gleason v. San Pedro, L. A. & S. L. R. Co.*, 49 U. 405, 164 P. 484.

3. Prima facie case.

What constitutes a prima facie case under this section is governed by general principles of negligence law. Of course a prima facie case is rebuttable. *Olmstead v. Oregon Short Line R. Co.*, 27 U. 515, 76 P. 557.

4. Evidence.

In actions instituted under the authority of this section, the general rules as to the competency, relevancy and admissibility of evidence apply, and with regard to the weight and sufficiency thereof, the "preponderance rule" obtains. *Gleason v. San Pedro, L. A. & S. L. R. Co.*, 49 U. 405, 164 P. 484.

5. Questions of law and fact.

The question of negligence under this section is for the jury. *Shay v. Union Pac. R. Co.*, 47 U. 252, 153 P. 31. See also *Preece v. Rio Grande W. R. Co.*, 24 U. 493, 68 P. 413; *P. A. Sorensen Co. v. Denver & R. G. R. Co.*, 49 U. 548, 164 P. 1020.

Decisions from other Jurisdictions—Iowa.

In action against railroad company for damages to plaintiff's property, caused by spark from defendant's locomotive, fact that part of building in which fire started was on land of defendant did not change degree of prudence and care which defendant was bound to exercise, to guard against injury by fire set by its instru-

mentalities, since plaintiff was not trespasser but was owner of improvements on such land under statute. *Petty v. Minneapolis & St. L. R. Co. (Iowa)*, 136 N. W. 1044, supplementing opinion and denying rehearing in 135 N. W. 11.

Proof that fire was set by burning ember from one of defendant's locomotives was sufficient to make out a prima facie case of negligence. *Stickling v. Chicago, R. I. & P. R. Co.*, 212 Iowa 149, 232 N. W. 677.

A verdict against a railroad for a fire set 1,324 feet from the track was supported by evidence that this fire and another fire on an adjoining farm were discovered almost immediately after a heavy freight train had passed, and that the locomotive was puffing hard, throwing out black smoke and pieces of fuel which were carried about 1,000 feet. *Stickling v. Chicago, R. I. & P. R. Co.*, 215 Iowa 1312, 247 N. W. 642.

Collateral References.

Railroads—482(1).

74 C.J.S. Railroads § 527.

Constitutionality, construction, and effect of statute invalidating stipulations relieving railroad from liability for destruction of buildings situated on its right-of-way, 16 A. L. R. 254.

Liability of railroad company for failing to aid in extinguishing fire set by its engine without negligence, 3 A. L. R. 509.

Validity and construction, as regards buildings not on right-of-way, of contract relieving railroad from liability for destruction of buildings, 51 A. L. R. 638.

56-1-16. Time schedules to be maintained—Notice of delays.—Every railroad company shall start and run its trains for the transportation of persons and property at such regular times as it shall fix by public notice, and the station agents thereof shall announce on a bulletin board, placed in a conspicuous and public place at each station not less than fifteen minutes before the regular time of departure of each passenger train, the time of such departure, or if the train is delayed, the probable duration of such delay, and on failure to do so is guilty of a misdemeanor. The railroad company shall be liable for all damages that may be sustained by any person by reason of the failure of any of its station agents to observe the requirements of this section.

History: R. S. 1898 & C. L. 1907, § 448; C. L. 1917, § 1240; R. S. 1933 & C. 1943, 77-0-16.

Collateral References.

Railroads—232.

74 C.J.S. Railroads § 407.

Schedules; starting and running time, 44 Am. Jur. 582, Railroads § 367.

56-1-17. Adequate accommodations and regular stops required.—Every railroad company shall furnish sufficient accommodations for the trans-

portation of all passengers and property as shall, within a reasonable time previous to the departure of any train, offer or be offered for transportation at any station, siding or stopping place established for receiving and discharging passengers and freight, and at any railroad junction; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor; and if the company or its agents shall refuse to take and transport any passenger or property or to deliver the same at the regularly appointed places, it shall be liable to the party aggrieved for all accruing damages.

History: R. S. 1898 & C. L. 1907, § 449; C. L. 1917, § 1241; R. S. 1933 & C. 1943, 77-0-17.

1. Legislative control over carrier.

Legislature of state may within certain limitations determine and direct at what places common carrier shall establish and maintain depots or stopping places for convenience of public, and it may require carrier to stop its trains at such depots or stopping places, and it may confer power to determine whether carrier shall do so upon some board; in either case courts have power to coerce defaulting carrier by mandamus to comply with legislative edict, or with order of such board or tribunal. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

2. Judicial control over carrier.

Under ordinary circumstances no inherent power is vested in courts to control common carrier in its determination of number of depots or stopping places that it will establish and maintain or in selection of places where it will establish and maintain them along its line. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

There is nothing in statute which confers upon any of courts of state the right or power to determine whether common carrier should establish and maintain depot or stopping place for receipt and discharge of passengers or freight or either at any particular place along its line of railroad. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

3. Extent and scope of carrier's duties.

The duties imposed by this section are to be discharged by common carrier at depots or stopping places which have been duly established, and have no reference to establishment of depots or stopping places, or to stopping of trains, where there are no regularly established depots or stopping places. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

4. Degree of care exacted of carrier.

The law imposes the duty upon carrier of exercising the utmost care to protect his passengers against accidents; and, in case accident occurs, inference arises that carrier has not exercised that high degree of care which law imposes. *Christensen v. Oregon Short Line R. Co.*, 35 U. 137, 99 P. 676, 20 L. R. A. (N. S.) 255, 18 Ann. Cas. 1159, 1 N. C. C. A. 232.

5. Action by passenger for injury.

In case of injury to railroad passenger, he is only required to prove that injury was occasioned by collision, derailling or upsetting of coaches, breaking of machinery or appliances, or things of that character, or through some acts of servants operating machinery, or in management of instrumentalities or means used in business over which carrier has control, and for management of which he is responsible. *Christensen v. Oregon Short Line R. Co.*, 35 U. 137, 99 P. 676, 20 L. R. A. (N. S.) 255, 18 Ann. Cas. 1159, 1 N. C. C. A. 232.

In action for personal injuries alleged to have been sustained by railroad passenger, evidence that while train was standing still, and after passenger had passed through car door to alight, and while her hand was resting on door jamb, door closed, injuring hand, held insufficient to show prima facie negligence of carrier, where it did not appear that catch was defective. *Christensen v. Oregon Short Line R. Co.*, 35 U. 137, 99 P. 676, 20 L. R. A. (N. S.) 255, 18 Ann. Cas. 1159, 1 N. C. C. A. 232.

6. Compelling carrier to discharge its duties.

Where it is duty of carrier to receive particular person at particular place, courts may, by writ of mandate, compel carrier to discharge such duty. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

If carrier refused passenger permission either to enter upon its cars or to alight therefrom at certain place while, under similar circumstances, it extended that privilege to enter and to alight from its

cars to others at that place, carrier would be guilty of discrimination, and court could require carrier to discharge its duty by writ of mandate. *State v. Ogden Rapid Transit Co.*, 38 U. 242, 112 P. 120.

74 C.J.S. Railroads § 396.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, 155 A. L. R. 634.

Collateral References.

Railroads↔223.

56-1-18. When riding outside regular cars.—In case a passenger on a train of a railroad company shall suffer personal injury while riding on the platform of any car or on any baggage, wood, gravel or freight car in violation of the company's printed regulations posted at that time in a conspicuous place inside its passenger cars then in such train, or in violation of verbal instructions given by any officer of such train or company, the railroad company shall not be liable for such injury provided at the time it had furnished and had available room inside of its passenger cars then in such train sufficient for the accommodation of the passengers.

History: R. S. 1898 & C. L. 1907, § 450; C. L. 1917, § 1242; R. S. 1933 & C. 1943, 77-0-18.

1. Duty resting on passenger.

Courts are required to enforce this section, but in so doing bear in mind that reason for it in main no longer exists, and thus avoid injustice of too strict construction. *Fish v. Ball*, 93 F. 2d 853.

It was duty of passenger to go inside train if he could reasonably do so, but he was not required to force his way through crowd of men and women by brute strength and awkwardness in order

to determine whether or not there was a seat. *Fish v. Ball*, 93 F. 2d 853.

Under some circumstances a passenger may recover notwithstanding he was injured while riding on the platform. It is not negligence per se. *Woods v. Southern Pac. Co.*, 9 U. 146, 33 P. 628. But see *Taylor v. Bamberger Elec. R. Co.*, 62 U. 552, 220 P. 695.

Collateral References.

Carriers↔331(4).

13 C.J.S. Carriers § 798.

Carriage of passengers, 10 Am. Jur. 22, Carriers § 947 et seq.

56-1-19. Right to eject.—If any passenger refuses to pay his fare or exhibit or surrender his ticket when requested so to do, or if he behaves in a disorderly manner, the conductor and employees of a railroad company may, on stopping the train, put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or in sight of a dwelling.

History: R. S. 1898 & C. L. 1907, § 451; C. L. 1917, § 1243; R. S. 1933 & C. 1943, 77-0-19.

Comparable Provisions.

Deering's Cal. Civ. Code, § 487; Mont. Rev. Codes 1947, § 72.606 (passenger and baggage may be put out of cars, without use of unnecessary force, at usual stopping place or near any dwelling house on stopping train, for refusal to pay fare or to exhibit or surrender ticket when reasonably requested to do so).

Idaho Code 1947, § 62-413 (such ejection may be made, using no unnecessary force, at any station of the railway company which is open at time of such ejection, on stopping the train, but not otherwise).

Iowa Code 1950, § 477.57 (permitting ejection from train at any station, or from streetcar, or interurban car at any regular stop, intoxicated person, or one drinking intoxicating liquor as a beverage, or person using profane or indecent language).

1. Place of ejection.

Even before the word "usual" was inserted in this section, it was held that the conductor must select a regular stopping place before ejecting a passenger. *Nichols v. Union Pac. R. Co.*, 7 U. 510, 27 P. 693, followed in *Durfee v. Union Pac. R. Co.*, 9 U. 213, 33 P. 944.

2. Operation and effect of section.

This section would not govern the right to eject in another state. In the absence

of statute, the ejection may be made at any place. *Rudy v. Rio Grande Western R. Co.*, 8 U. 165, 170, 30 P. 366, quoting 2 Comp. Laws 1888, § 2354.

Decisions from other Jurisdictions—Iowa.

A passenger wrongfully ejected from a car or train cannot recklessly or foolishly aggravate the inconvenience or suffering resulting to him therefrom, and thereby enhance or enlarge the damages recoverable from the carrier; but, on the other hand, he is not bound at his peril to use the highest possible degree of care in the choice of expedients by which to extricate himself from his predicament. *Meyers v. Keokuk Elec. Co.*, 190 Iowa 693, 180 N. W. 733.

Where a passenger was directed by a duly authorized agent of the carrier to get upon a train, which did not stop at his destination, he was rightfully upon the train; and he could recover for his ejection therefrom by the conductor in an action in tort, even though the conductor was required by the rules of the carrier to eject him; and he was not limited to recovery for breach of contract. *Wilkes v. Chicago, R. I. & P. R. Co.*, 197 Iowa 832, 198 N. W. 44, 36 A. L. R. 1012.

Wrongful ejection of a passenger of itself warrants award of substantial, rather than nominal, damages. *Vanderbeck v. Chicago, M., St. P. & P. R. Co.*, 210 Iowa 230, 230 N. W. 390.

Collateral References.

Carriers—351.

13 C.J.S. Carriers § 807.

56-1-20. Operating employees to wear insignia.—Every conductor, baggage master, engineer, brakeman or other employee of a railroad company, employed in a passenger train or at the stations for passengers, shall wear upon his hat or cap or in some conspicuous place on the breast of his coat a badge indicating his office or station, and, by its initial letters, the name of the company by which he is employed; and no collector or conductor without such badge shall demand or be entitled to receive from any passenger any fare or ticket or exercise any of the powers of his office or station or interfere with any passenger or his property.

History: R. S. 1898 & C. L. 1907, § 452; C. L. 1917, § 1244; R. S. 1933 & C. 1943, 77-0-20.

Comparable Provisions.

Deering's Cal. Civ. Code, § 488.

Montana Rev. Codes 1947, § 72-607 (substantially the same).

Attempt to have child transported without paying fare, 1 A. L. R. 1451.

Carrier's liability for conduct of passenger (other than assault) causing injury to other passenger, 140 A. L. R. 1194.

Carrier's liability to passenger for consequences of ejection or threatened ejection by one employee due to fault of another employee, 36 A. L. R. 1018.

Conductor's acceptance of ticket or pass which because of time limit or for other reason he was not obliged to accept as affecting status of, or duty toward, person tendering it, 88 A. L. R. 760.

Dispute over payment of fare as justifying arrest of passenger by carrier, 39 A. L. R. 862.

Duty and liability of carrier to intoxicated passenger while enroute, 17 A. L. R. 1003.

Duty of carrier to other passengers respecting transportation of insane passenger, 12 A. L. R. 242.

Excess fare for passenger not purchasing ticket, 48 A. L. R. 330.

Liability of railroad company for acts of employees in ejecting trespassers from train, 72 A. L. R. 536.

Loss of contract or business opportunity as element of damages for wrongful ejection from train or being carried past station, 25 A. L. R. 916.

Loss or theft of passenger's ticket or other token of right to transportation as affecting rights and duties of carrier and passenger, 127 A. L. R. 222.

Right of passenger who has been ejected to re-enter car or train, 5 A. L. R. 352.

Collateral References.

Carriers—255.

13 C.J.S. Carriers § 609.

Validity of statute prescribing qualifications for railroad employees, 58 A. L. R. 569.

56-1-21. Checking baggage.—A check shall be affixed by the agents or employees of a railroad company to every package or parcel of baggage when taken for transportation and a duplicate thereof given to the passenger or person delivering the same.

History: R. S. 1898 & C. L. 1907, § 453; C. L. 1917, § 1245; R. S. 1933 & C. 1943, 77-0-21.

Comparable Provisions.

Deering's Cal. Civ. Code, § 479; Idaho Code 1947, § 62.401; Mont. Rev. Codes 1947, § 72.601 (check must be affixed to each package or parcel of baggage; \$20 recoverable by passenger in action for damages for refusal of check on demand; may recover value of the baggage if not delivered to him on producing the check).

Collateral References.

Carriers—394.
13 C.J.S. Carriers § 863.
Baggage checked in parcel room, 10 Am. Jur. 468, Carriers §§ 1779, 1780.

Carrier's liability in respect to baggage checked in parcel room, 37 A. L. R. 762.

Discrimination by carrier between passengers as regards checking and handling of baggage, 59 A. L. R. 329.

Extra or excess baggage, 2 A. L. R. 109.

Liability of carrier for baggage not accompanied by passenger, 23 A. L. R. 1446.

Measure and elements of damages for loss or delay in delivering baggage of traveling salesman, 25 A. L. R. 76.

Regulation by public service commission as to checking and handling of baggage, 21 A. L. R. 323.

Responsibility of carrier for acts or omissions of redcaps, or porters other than train employees, 59 A. L. R. 126.

56-1-22. Railroads under public utilities commission.—Nothing contained in this title shall be so construed as to dispense with the necessity for railroad companies to comply with the provisions of the title relating to Public Utilities applicable to such companies and the conduct of their business.

History: Code Report; R. S. 1933 & C. 1943, 77-0-22.

Collateral References.

Carriers—11.
13 C.J.S. Carriers § 15.

Cross-Reference.

Utilities commission, powers generally, 54-4-1 et seq.

56-1-23. Conditional sales of equipment.—In any contract for the sale of railroad or street railway equipment or rolling stock it shall be lawful to agree, that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless, (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary of state of this state; (3) each

locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

History: L. 1905, ch. 4, § 1; C. L. 1907, § 456x2; C. L. 1917, § 1260; R. S. 1933 & C. 1943, 77-0-23.

Comparable Provisions.

Deering's Cal. Gen. Laws, Act 6475, § 1 (substantially identical).

Idaho Code 1947, § 62-501 (substantially identical, except that the following bracketed phrase is omitted from subd. 3 of the proviso: " * * * plainly marked [in letters not less than one inch in size] on each side thereof * * *").

Iowa Code 1950, §§ 556.22, 556.23 (similar).

Montana Rev. Codes 1947, § 72-305 (substantially identical; in subd. 2 of the proviso there is requirement that instrument be also filed for record in office of county clerk and recorder, where line of rail-

road or street railway company lies wholly within one county; from subdivision 3 there is omitted the following bracketed phrase: " * * * plainly marked [in letters not less than one inch in size] on each side thereof * * *").

1. In general.

Formerly a conditional sale of a locomotive was valid, as against vendee's creditors, though it was not executed and recorded as chattel mortgages are required to be. *Lima Machine Works v. Parsons*, 10 U. 105, 37 P. 244, applying 2 Comp. Laws 1888, § 2814.

Collateral References.

Railroads—116.

74 C.J.S. Railroads § 193.

56-1-24. Recording contract.—The contracts mentioned in the next preceding section shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect shall be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee such as is allowed by law for recording like instruments.

History: L. 1905, ch. 4, § 2; C. L. 1907, § 456x3; C. L. 1917, § 1261; R. S. 1933 & C. 1943, 77-0-24.

Comparable Provisions.

Deering's Cal. Gen. Laws, Act 6475, § 2 (declaration must be made by separate instrument; fee of \$5 for filing contract or declaration; 20 cents per folio for recording same).

Idaho Code 1947, § 62-502 (substantially identical; the fee is specified as \$2 for recording each contract and declaration;

\$1 for noting declaration on margin of record).

Iowa Code 1950, § 556.25 (contracts to be filed with secretary of state).

Montana Rev. Codes 1947, § 72-306 (substantially identical and specifying fee of \$15 for recording each contract and each declaration; \$1 for noting declaration on margin of record).

Collateral References.

Railroads—116.

74 C.J.S. Railroads § 193.

CHAPTER 2

MOVEMENT OF DEFECTIVE ROLLING STOCK

Section 56-2-1.	Definitions.
56-2-2.	Movement of defective rolling stock prohibited—Exceptions.
56-2-3.	Penalties.

- 56-2-4. Public service commission to enforce provisions.
- 56-2-5. Construction of act.
- 56-2-6. Fencing right-of-way—Powers of public service commission—Protection of livestock.
- 56-2-7. Exercise of power by commission—Conditions precedent—Application.
- 56-2-8. Contents of application.
- 56-2-9. Notice of filing of application—Hearing.
- 56-2-10. Conduct of hearing before commission.
- 56-2-11. Modification or revocation of commission's orders.
- 56-2-12. Penalties for noncompliance by railroad.

56-2-1. Definitions.—The words "broken or defective" as used in this act shall mean any defects in the wheels, trucks, draft gears, couplers, brakes, draft and center sills, of any car, coach, locomotive or other rolling stock of a railroad company and every other defect in any car, coach, locomotive or other rolling stock which would be dangerous to the public or to any employee of a railroad company while said car is being moved, hauled or transported.

The word "local yard service" as used in this act shall mean the movement of any car, coach, locomotive or other rolling stock in the railroad yards of any railroad company and between the railroad yards of one or more railroad companies where the distance does not exceed eight miles.

History: L. 1937, ch. 94, § 1; C. 1943, 77-0-25.

in control of the operation of railroads within the state of Utah and providing penalties for the violation of this act.

Title of Act.

An act providing for the safety of the public and railroad employees by prohibiting the movement of defective rolling stock of railroad companies operating or

Collateral References.

Carriers—11.

13 C.J.S. Carriers § 15.

56-2-2. Movement of defective rolling stock prohibited—Exceptions.—It shall be unlawful for any railroad corporation operating or in control of the operation of any railroad within the state of Utah to haul or transport or cause to be hauled or transported any broken or defective car, coach, locomotive or other rolling stock owned, leased or controlled by said railroad company or any broken or defective car, coach, locomotive or other rolling stock in the control or subject to the orders of said railroad company within the state of Utah, except that this act shall not apply to prevent the movement of such defective cars or equipment in case of fire, strikes or by an act of God where the movement of such defective equipment is required by any statute of the Congress of the United States, or where such cars or equipment are loaded for movement and will not move on their own wheels in such transportation. This act shall not be applicable to the movement of defective cars or equipment in local yard service or where the defects in the rolling stock shall occur while in transit, but such defective cars and equipment shall not be moved or transported a greater distance than the nearest repair point within this state where said company maintains shops equipped to repair such defect.

History: L. 1937, ch. 94, § 2; C. 1943, 77-0-26.

1. Common-law duty and liability generally.

As to common-law duty of railroad company to consignee or latter's employee to

furnish safe car or car with safe load, and liability for injuries sustained by consignee or its employee as result of delivering defective car or car with defective load, see *Raymond v. Union Pacific R. R. Co.*, 113 U. 26, 191 P. 2d 137, where railroad company, in delivering gondola car loaded with scrap metal to consignee, was held not liable for crushed hand sustained

by switchman employed by consignee when load shifted during switching and coupling operations, on grounds of absence of negligence and contributory negligence on part of switchman as matter of law.

Collateral References.

Carriers⊕11.

13 C.J.S. Carriers § 15.

56-2-3. Penalties.—Every railroad corporation guilty of transporting defective cars or equipment within the state of Utah is punishable by a fine not less than \$250 and not more than \$1,000 for every such offense, and the person or employee of said corporation responsible for permitting such broken or defective car to go into transit and to be transported within the state of Utah shall be guilty of a misdemeanor.

History: L. 1937, ch. 94, § 3; C. 1943, 77-0-27.

56-2-4. Public service commission to enforce provisions.—The public service commission of Utah is hereby required to enforce the provisions of this act and for such purpose is hereby authorized to employ such necessary officials, investigators and inspectors as shall be necessary to provide for the enforcement thereof. And said commission is hereby empowered to prescribe the salaries and duties of such officers, investigators and inspectors.

History: L. 1937, ch. 94, § 4; C. 1943, 77-0-28.

Collateral References.

Carriers⊕11.

13 C.J.S. Carriers § 15.

56-2-5. Construction of act.—It is hereby declared that this act is passed for the purpose of preserving the safety of the public and of employees engaged in the service of railroad companies and to render less dangerous the performance of duties of such employees.

History: L. 1937, ch. 94, § 5; C. 1943, 77-0-29.

56-2-6. Fencing right-of-way—Powers of public service commission—Protection of livestock.—The public service commission shall have the jurisdiction and authority to require every railroad company or corporation operating any steam or electric railroad in this state to erect and maintain fences on each side or either side of such railroad, where such railroad is not now required by law to erect and maintain fences, at such places as the commission shall determine such fences to be necessary to protect sheep, cattle, horses or mules or any other domestic animal being driven, ranged or grazed upon lands adjacent to such railroad from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon or over such railroad, with necessary openings and gates in such fences, and crossings and cattle guards.

History: L. 1947, ch. 95, § 1; C. 1943, Supp., 77-0-30.

Title of Act.

An act conferring jurisdiction on the Public Service Commission to require

fences, along railroads under circumstances prescribed in this Act, with openings, gates, crossings and cattle guards, and prescribing the procedure for the exercise of such jurisdiction and authorizing such commission to modify or revoke its orders

requiring fences; and relieving non-complying railroad companies and corporations and their officers, agents and employees from certain penalties prescribed by Sections 76-6-25 and 76-6-26, Utah Code An-

notated 1943, but subjecting such companies and corporations to liability prescribed under Section 77-0-13, Utah Code Annotated 1943.

56-2-7. Exercise of power by commission—Conditions precedent—Application.—Such jurisdiction and authority shall be exercised in each instance only when verified application shall be filed with such commission by not less than three persons owning sheep, cattle, horses, sheep or mules with the right to drive, range or graze the same upon the land adjacent to the portion of the railroad sought to be fenced.

History: L. 1947, ch. 95, § 2; C. 1943, Supp., 77-0-31.

Collateral References.

Railroads \hookrightarrow 103(2).
74 C.J.S. Railroads § 177.

56-2-8. Contents of application.—Such application shall set forth sufficient description of such lands to identify the same, and the name and address of the owner or owners of such lands, and if any such lands are lands of the United States or the state of Utah shall designate the agency or department of government administering such lands, and shall also set forth the nature of the right of each petitioner to drive, range or graze sheep, cattle, horses, mules thereon. Such application shall also specify the ownership of the railroad sought to be fenced.

History: L. 1947, ch. 95, § 3; C. 1943, Supp., 77-0-32.

Collateral References.

Railroads \hookrightarrow 103(2).
74 C.J.S. Railroads § 177.

56-2-9. Notice of filing of application—Hearing.—Upon the filing of such application, notice thereof and of hearing by the commission thereon shall be given by registered mail return receipt by the commission to the owner or owners of such lands and if any such land is land of the United States or the state of Utah to the agency or department of government administering such land, and to the railroad company or corporation owning or operating the railroad and such owners, agency or department and such railroad shall have the right to protest the granting of such application and be heard thereon.

History: L. 1947, ch. 95, § 4; C. 1943, Supp., 77-0-33.

Collateral References.

Railroads \hookrightarrow 103(2).
74 C.J.S. Railroads § 177.

56-2-10. Conduct of hearing before commission.—Upon such hearing the commission shall determine whether or not any fence or fences shall be necessary to protect sheep, cattle, horses or mules or animals being ranged or grazed upon the land designated in such application, from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon such railroad and may then order that fence or fences be constructed and maintained by the railroad company or corporation at such place or places along such railroad adjacent to the lands designated in such petition as the commission in its discretion shall determine and may fix the time within which such fence or fences shall be constructed and may designate the place or places for necessary openings and gates therein and crossings and cattle guards in connection

therewith, and the type of construction of said fences, openings and gates.

History: L. 1947, ch. 95, § 5; C. 1943, **Collateral References.**
Supp., 77-0-34.

Railroads ~~103~~(2).
74 C.J.S. Railroads § 177.

56-2-11. Modification or revocation of commission's orders.—Such commission shall also have the jurisdiction and authority to modify or revoke any such order when upon its determination the necessity for any such fence shall cease to exist.

History: L. 1947, ch. 95, § 6; C. 1943, **Collateral References.**
Supp., 77-0-35.

Railroads ~~103~~(2).
74 C.J.S. Railroads § 177.

56-2-12. Penalties for noncompliance by railroad.—The failure of any railroad company or corporation to comply with any order of the commission authorized by this act shall not subject such noncomplying railroad company or corporation, or any of its officers, agents or employees, to any of the penalties prescribed in sections 54-7-25 and 54-7-26, Utah Code Annotated 1953, but shall subject such company or corporation to the liability prescribed by section 56-1-13, Utah Code Annotated 1953.

History: L. 1947, ch. 95, § 7; C. 1943,
Supp., 77-0-36.

as "Sections 76-6-25 and 76-6-26, Utah Code Annotated 1943" and "Section 77-0-13, Utah Code Annotated 1943."

Compiler's Note.

The references in this section to "sections 54-7-25 and 54-7-26, Utah Code Annotated 1953" and "section 56-1-13, Utah Code Annotated 1953" appeared in the act

Collateral References.

Railroads ~~103~~(2).
74 C.J.S. Railroads § 177.